

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning and Video Description of Video Programming)	CG DOCKET No. 06-181
)	
Catholic Diocese of Youngstown d/b/a The Catholic Television Network of the Diocese of Youngstown)	CGB-CC-0529
)	
To: Secretary, FCC		
ATTN: Chief, Consumer & Governmental Affairs Bureau		

**CONSOLIDATED REPLY OF THE CATHOLIC TELEVISION NETWORK OF THE
DIOCESE OF YOUNGSTOWN**

Catholic Diocese of Youngstown d/b/a The Catholic Television Network of the Diocese of Youngstown (CTNY) hereby submits its reply to the March 13, 2007 "Opposition" filed by Telecommunications for the Deaf and Hard of Hearing, Inc., National Association for the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, Association of Late-Deafened Adults, Inc., American Association of People with Disabilities and California Coalition of Agencies Serving the Deaf and Hard of Hearing (collectively, "Commenters")¹.

Background. CTNY is a department of the Roman Catholic Diocese of Youngstown, Ohio. CTNY was established in 1980 by the Diocese in order to expand the production and delivery of its radio and TV programs. With only two full-time employees and no technical personnel, it relies on Diocesan support and donations

¹ The FCC's Electronic Comment Filing system also shows a Comment filed by Arvilia Rank ("Rank"), signing as "Secretary, International Deaf Association -United States, Chapter 29, Landover Hills, Maryland". The instant Reply also addresses Rank's Comment.

from the public. CTNY also operates The Ecumenical Television Channel (ETC), serving Northeastern Ohio and Western Pennsylvania, which is distributed on over 10 cable systems and two hospitals reaching more than 300,000 potential viewers daily. ETC provides both Christian and Jewish programming from both local and national sources.

On May 16, 2006, CTNY filed its Petition for Exemption and/or Waiver of the closed captioning rules to allow continued broadcast of its half-hour, weekly program-- "The Mass for Shut-Ins"-- broadcast each Sunday on Youngstown television Station WFMJ-TV. By letter dated September 11, 2006 ("Letter Grant"), the Consumer and Governmental Affairs Bureau (CGAB) of the FCC granted the exemption, finding that the cost of captioning represented an undue burden on CTNY. On November 7, 2006, the CGAB sought comments on numerous requests for exemption from the closed captioning rules, including that of CTNY.² Commenters filed in opposition to the CTNY exemption request on March 13, 2007. Rank's Comment was apparently filed on March 27, 2007.³

The Letter Grant Was Final When the Public Notice was Issued and Is No Longer Subject to Challenge

As previously stated, the Letter Grant of exemption from the closed captioning rules for "The Mass for Shut-Ins" was dated September 11, 2006. Under the applicable rules, it became final on October 21, 2006. CGAB waived the procedural rules

² *Consumer and Governmental Affairs Bureau Action, Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181, Public Notice, DA 06-2287 (rel. Nov. 7, 2006) ("CAGB Notice").

³ *Consumer and Governmental Affairs Bureau Action, Extension of Comment Period on Petitions for Exemption from Commission's Closed Captioning Rules; Ex Parte Treatment of Filings in Docket*, CG Docket No. 06-181, Public Notice, DA 06-2329 (rel. Nov. 21, 2006) extended the deadline for the filing of comments and oppositions to petitions to March 27, 2007, and for the filing of replies to "40 days after the comments/oppositions deadline" or May 7, 2007. Accordingly, this reply has been timely filed.

regarding public notice and comments for CTNY's request on its own motion, finding "good cause" for the waiver and stating "in light of the facts set forth in your petition and the precedent discussed above, we conclude that waiving these requirements in the instant case is consistent with the public interest". (Letter Grant, footnote 5).

If a document is neither published in the Federal Register nor released, and if a descriptive document entitled "Public Notice" is not released, the date appearing on the document sent to persons affected by the action establishes the date reconsideration or review of the decision (Section 1.4 (b)(4) of the Commission's rules). The Bureau could have reopened the matter of the exemption grant on or before October 11, 2006 (Section 1.113) or the full Commission could have set aside the delegated action on or before October 21, 2006. The CGAB Notice, released November 7, 2006, was clearly ineffective with respect to the final grant of exemption to CTNY for "The Mass for Shut-ins". While the CGAB Notice included the statement that "We hold the letter orders granted by the Bureau in abeyance until the comment cycle on these petitions has ended" (footnote 5), there is no provision in the Commission's rules for holding granted actions "in abeyance" after finality, let alone any provision for reversal more than 40 days after the date of grant. In short, the grant to CTNY had become final, and therefore the CGAB Notice was ineffective as to the status of that grant. In effect, the CGAB invited the Commenters to submit late-filed petitions for reconsideration in derogation of statutory requirements that may not be waived by the CGAB in these circumstances. Under these circumstances, the filings by Commenters and Rank must be disregarded.

Commenters Lack Standing to Object to CTNY's Exemption Request for "The Mass for Shut-Ins"

Wholly apart from the fact that CTNY's exemption is a final decision beyond challenge, neither the Commenters' nor Rank established standing to file comments with regard to "The Mass for Shut-Ins". Commenters appear to be national organizations, in some cases related to each other, located in the greater Washington, D.C. metropolitan area, Rockford, Illinois and Cypress, California. The "Certification" filed in support of the Comments was executed by the Executive Director of one of the organizations. Rank, too, appears to be affiliated with an organization located in the Greater Washington Metropolitan area. No viewer of Station WFMJ-TV, Youngstown, Ohio has expressed opposition to CTNY's request for an exemption from closed captioning rules for "The Mass for Shut-Ins".

To establish standing to challenge an action of the FCC, a petitioner must demonstrate (1) an injury in fact that is (2) fairly traceable to the challenged action and (3) likely to be redressed by the requested relief. See Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 102-03 (1998); Jaramillo v. FCC, 162 F.3d 675, 676 (D.C. Cir. 1998); KERM, Inc. v. FCC, 353 F.3d 57, 59 (D.C. Cir. 2004). Manifestly, the Commenters have not met this burden, and their filings should be summarily dismissed on this second independent procedural ground.

CGAB Applied the Appropriate Standard to Find "The Mass for Shut-Ins" Exempt from the Closed Captioning Requirement

Regardless of the procedural infirmities of the Commenters' filing, it must be stressed that the CGAB correctly concluded in the Letter Grant that application of the closed captioning requirements to CTNY's production of "The Mass for Shut-Ins" would cause an undue burden in light of the Commission's rules. In this regard, the CCAB

properly relied upon Anglers for Christ Ministries, Inc. and New Beginning Ministries, Inc., 21 FCC Rcd 10094 (2006)(“Anglers”) as precedent for its grant of CTNY’s waiver request. In Anglers, the CGAB stated that it would favorably consider petitions for exemption from non-profit organizations that do not receive compensation from video programming distributors for airing of the programs in question where the costs of captioning might cause the organization to terminate or substantially curtail its programming or other mission-related activities. As reiterated below, that is exactly the case here with CTNY and “The Mass for Shut-Ins”; thus, the CGAB action stands as an exemplar of the proper and appropriate application of the closed captioning rules.

In particular, contrary to the cursory and generalized summary of the CTNY’s case made by Commenters in their Opposition, CTNY presented detailed and specific captioning costs and its departmental budget for 2004-2005. This information amply justified the CGAB’s grant of a waiver.⁴ Among other things, CTNY’s request established that captioning costs would represent about 9% of CTNY’s entire annual budget, so that forced captioning would necessitate the curtailment other essential programs. Either outcome – the termination of “The Mass for Shut-Ins” due to captioning costs, or the termination of other valuable mission-related programs by CTNY-- would not serve the public interest. The CGAB agreed, and Commenters provide absolutely no analysis or facts to warrant a reversal of this judgment.

It is an unfortunate omission in the FCC’s rules that programs like “The Mass for Shut-Ins” are not categorically exempt from captioning requirements. Had the program been produced by either the licensee of Station WFMJ, or by one of the cable

⁴ See attachments to CTNY waiver request. It should also be noted that “The Mass for Shut-Ins” is produced by CTNY under church guidelines requiring that every “taped” Mass contain topical sermons and specific scriptural reading, and thus must be aired within a few days of taping. The costs of captioning might be lesser for a program taped in advance, as stated by Rank. However, that option is not available to CTNY.

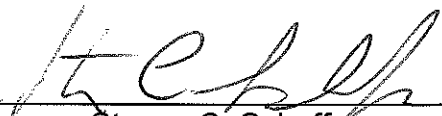
companies which carry CTNY's "The Ecumenical Channel", it would be categorically exempt. The technicality that CTNY is not a "program distributor" entitled to an automatic exemption under the rules is arbitrary and unfair. Notwithstanding the Commenter's claims to the contrary, the CGAB's reasoned decision in Anglers correctly recognizes that non-profit organizations producing programming of local interest deserve similar treatment through the grant of exemption requests and that there is no basis for applying a stricter standard to such entities.

WHEREFORE, the premises stated, the opposition filings by Commenters and Rank should be dismissed and the grant of exemption from closed captioning rules for "The Mass for Shut-Ins" affirmed.

Respectfully submitted,

CATHOLIC DIOCESE OF YOUNGSTOWN
D/B/A CATHOLIC TELEVISION NETWORK OF
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By: _____


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